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DATE MAILED: 02/27/2003

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/427,123	10/21/1999	MICHAEL·B. BALL	2818.1US	2755
7:	590 02/27/2003	,		
BRICK G POWER			EXAMINER	
TRASK BRITT & ROSSA P O BOX 2550 SALT LAKE CITY, UT 84110			POTTER, ROY KARL	
			ART UNIT	PAPER NUMBER
			2822	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Raximiner	4,	Application No.	Applicant(s)				
Examiner Roy K Potter 2822  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE § MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION, - dear State of the Cover sheet with the correspondence address the period for reply segolidad social is last his hilly (30 days, a reply whith his statutory microward is the period for reply segolidad social is last his hilly (30 days, a reply whith his statutory microward is stated by the file and the stated is the period for reply segolidad social is last his hilly (30 days, a reply whith his statutory microward is stated by the file the side of the communication, if the period for reply segolidad social is last his making days and will seguis \$X (30 MCNTH's from the making day of this communication, if the period for reply segolidad social his communication, if the period for reply segolidad social his last his making days and will seguis \$X (30 MCNTH's from the making days of the communication, if the period for reply segolidad social his period of the period for reply segolidad social his communication, if the period for reply segolidad social his communication, if the period for reply segolidad social his communication, if the period for reply segolidad social his communication, if the period for reply segolidad social his communication, if the period for reply segolidad social his communication, if the period social his period period is a segolidad social his communication, if the period for reply segolidad social his communication, if the period social his communication, if the period social his communication, if the period is a segolidad social his communication, if the period is a segolidad social his communication, if the period is a segolidad social his communication, if the period social his communication, if the period social his communication, if the period social his segolidad social his period social his period social his segolidad	٠	09/427,123	BALL, MICHAEL B.				
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1)	A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136 after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply one of the second of	6(a). In no event, however, may a reply be tim within the statutory minimum of thirty (30) days ill apply and will expire SIX (6) MONTHS from to cause the application to become ABANDONED	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).				
3  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s)	1) Responsive to communication(s) filed on <u>08 Ju</u>	<u>ıly 2002</u> .					
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4a) C claim(s) 1 and 2 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration.  5) □ Claim(s) is/are allowed. 6) □ Claim(s) is/are rejected.  7) □ Claim(s) is/are objected to. 8) □ Claim(s) are subject to restriction and/or election requirement. Application Papers  9) □ The specification is objected to by the Examiner.  10) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) □ The proposed drawing correction filed on is: a) □ approved b) □ disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) □ The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) □ All b) □ Some * c) □ None of:  1. □ Certified copies of the priority documents have been received in Application No  3. □ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a) □ The translation of the foreign language provisional application has been received.  15) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 120 and/or 121.  **Ratchment(s)**    Molice of References Cited (PTO-892)	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
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## **DETAILED ACTION**

## **Double Patenting**

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See Miller v. Eagle Mfg. Co., 151 U.S. 186 (1894); In re Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1 and 2 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 2 of prior U.S. Patent No. RE 36,613. This is a double patenting rejection.

## Reissue Applications

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

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Claims 1 - 2 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Potter whose telephone number is (703) 308-4106.

Roy Potter

Primary Examiner

Technology Center 2800

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Potter

February 4, 2003